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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,562	07/18/2003	Peter Ho	01-12 RCE	4794

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EXAMINER

PATEL, NIHIR B

ART UNIT	PAPER NUMBER
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3772

MAIL DATE	DELIVERY MODE
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07/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/622,562	Applicant(s) HO, PETER	
	Examiner Nihir Patel	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05.17.2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-11, 13-23, 25-31 and 33-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-23, 25-31 and 33-41 is/are allowed.
- 6) ☒ Claim(s) 2-6, 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 7, 8 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11.18.2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims **2-11** is withdrawn in view of the newly discovered reference(s). Rejections based on the newly cited reference(s) follow.

Terminal Disclaimer

2. The terminal disclaimer filed on May 11th, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6,805,117 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims **2-6 and 9** are rejected under 35 U.S.C. 102(b) as being anticipated by Lomas (US 5,542,128).

5. **As to claim 2**, Lomas teaches a headwear for supporting a breathing apparatus that comprises a headpiece **8 (see figure 2)**; and a connecting strap **14, 19 and 20** attached to the headpiece and adapted for releasably connecting the headgear to the patient interface device (**see figure 2**); wherein the headpiece comprises contoured panels **9 and 10 (see figure 5)**, each panel including an upper edge (**the interior part of reference characters 9 and 10**) having a length and a lower edge (**the exterior part of reference characters 9 and 10**) having a length, the length of the upper edge is shorter than the length of the lower edge (**see figure 5**); a rear joining

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piece **26 and 27** (see **figures 5 and 6**) positionable along a rear portion of a patient's head; and a front joining piece (**the upper part of panels 9 and 10**) positionable along a front portion of such a patient's head, wherein each of the contoured panels extend from the rear joining piece to the front joining piece (see **figure 2**).

6. As to **claim 3**, Lomas teaches an apparatus wherein the connecting strap is an upper connecting strap attached to the front joining piece and adapted to releaseably connect the headgear to the patient interface device (see **figure 2**).

7. As to **claim 4**, Lomas teaches an apparatus that further comprises a lower connecting strap attached to the rear-joining piece and adapted to releasably connect the headgear to the patient interface device (see **figures 2 and 6**).

8. As to **claim 5**, Lomas teaches an apparatus wherein the upper and the lower connecting straps include hook and loop components for adjustably connecting the headgear to the patient interface device (see **figures 2, 5 and 6**).

9. As to **claim 6**, Lomas teaches an apparatus wherein the upper and lower connecting straps include a loop fastener portion on the exterior thereof and an end portion having a hook tab portion, wherein each hook tab portion is adapted for threading through a connecting element of the patient interface device and securing to the loop fastener portion (see **figure 2, 5 and 6**).

10. As to **claim 9**, Lomas teaches an apparatus wherein each of the contoured panels has an arch-shape having an upper edge having a concave curvature and a lower edge having a concave curvature and a lower edge having a convex curvature (see **figure 3**).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claim **10** is rejected under 35 U.S.C. 103(a) as being unpatentable over Lomas (US 5,542,128).

14. **As to claim 10**, Lomas substantially discloses the claimed invention; see rejection of claim 2 above, but does not disclose a headpiece being formed from an elastomeric material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lomas's invention by providing a headpiece being formed from an elastomeric material in order to make it easier for the user to use, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 146.

Allowable Subject Matter

15. Claims **13-23, 25-31 and 33-41** are allowed.

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16. Claims 7, 8 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach a crossover strap extending from one of the contoured panels to another contoured panels and a stabilizer attached to the headpiece and adapted to stabilize a conduit connected to the patient interface device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

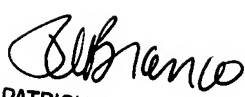
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Nihir Patel


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6/25/07